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No. 84-2035

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1984

BYRON W. YORK, JOSEPH VAN ROEKEL, ALAN V. PAREIS, HELEN WESTBERT, JOE E. LOGSDON III, and PEYTON KUNCE, Individually as as Members of THE ANNA ADMINISTRATIVE COMMISSION II OF THE SOUTHEASTERN PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA, on behalf of said ANNA ADMINISTRATIVE COMMISSION II and on behalf of THE UNITED PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA and SOUTHEASTERN ILLINOIS PRESBYTERY OF THE UNITED PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA,

*Petitioners,*

vs.

THE FIRST PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, an Illinois Not-For-Profit Corporation, ANNA PRESBYTERIAN FOUNDATION, an Illinois Not-For-Profit Corporation, and CLAIR S. ALBRIGHT, HELEN OWENS, CHARLOTTE RIFE, JOHN LUTZ, LISA WELLS, JANE RADER, JOEL MELLER, NORMAN HICHAM and JOYCE VERBLE, Individually and as Members of the Session of THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS,

*Respondents.*

# BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT

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## QUESTIONS PRESENTED

I.

WHETHER ANY SUBSTANTIAL FEDERAL QUESTION IS INVOLVED, BECAUSE THE ILLINOIS APPELLATE COURT RESOLVED THE PROPERTY DISPUTE ON THE BASIS OF NEUTRAL PRINCIPLES OF STATE LAW THAT DID NOT INVOLVE INQUIRY INTO RELIGIOUS DOCTRINE, PRACTICE OR PRECEPTS.

II.

WHETHER THE ILLINOIS APPELLATE COURT WOULD HAVE DECIDED A FEDERAL QUESTION, AND IN A WAY IN CONFLICT WITH THE DECISIONS OF THIS COURT, ONLY HAD IT FOLLOWED PETITIONERS' URGING TO INVOLVE ITSELF IN INTERPRETING THE UPCUSA CONSTITUTION IN RELIANCE ON THE RELIGIOUS DOCTRINE, PRACTICE AND PRECEPTS OF UPCUSA.

## TABLE OF CONTENTS


| | Page |
|---|---|
| Questions Presented | i |
| Table of Authorities | iii |
| Jurisdictional Statement | 2 |
| Statement Of The Case | 3 |
| Reasons For Denying The Writ | 10 |
| Conclusion | 18 |
| Appendix A | A-1 |
| Appendix B | A-2 |
| Appendix C | A-5 |


## TABLE OF AUTHORITIES


Foss v. Dykstra, 342 N.W.2d 220 (1983) ..... 16

First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States of America, 62 N.Y.2d 110, 464 N.E.2d 454 (1984), *cert. denied,* 83 L.Ed.2d 404, 105 S.Ct. 514 (1985) 11, 16, 18

Jones v. Wolf, 443 U.S. 595, 61 L.Ed.2d 775, 99 S.Ct. 3020 (1979) ..... 11, 12, 18

Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, 396 U.S. 367, 24 L.Ed.2d 582, 90 S.Ct. 494 (1969) ..... 10, 12, 13

Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601 (1969) ..... 10, 11, 13

Presbytery of Elijah Parish Lovejoy v. Jaeggi, 682 S.W. 2d 465 (1984), *cert. denied,* 105 S.Ct. 2361 (1985).. 16

Presbytery of Riverside v. Community Church of Palm Springs, 89 Cal.App.3d 910, 152 Cal.Rptr. 854, *cert. denied,* 444 U.S. 974 (1979)..... 15

Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976) ..... 17

Watson v. Jones, 80 U.S. (13 Wall.) 679 (1872)..... 14, 15

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*Respondents.*

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# BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT

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The First Presbyterian Church of Anna, Illinois, a corporation, and other Respondents named in the caption, respectfully submit this Brief in Opposition to the Petition for Writ of Certiorari [hereinafter "Petition"] to the Appellate Court of Illinois, Fifth District.

## JURISDICTIONAL STATEMENT

The ground on which the jurisdiction of this Court is attempted to be invoked is not present. The Appellate Court of Illinois did not, as the Petition alleges, "consider and determine the issue of the applicability" of the First Amendment. The Appellate Court fully acknowledged the applicability of the First Amendment, and applied neutral principles of the law of the State of Illinois totally within the circumscription prescribed by the First Amendment. See REASONS FOR DENYING THE WRIT, part I, *infra*.

## STATEMENT OF THE CASE

Petitioners' Statement of the Case contains both inaccuracies and significant omissions. Further, Petitioners represent (Petition p. 3) to this Court that Respondents never challenged, and the Illinois Appellate Court did not find any fault with, the Trial Court's findings of fact. That constitutes an egregious misrepresentation. Correction is necessary.

Respondents have throughout the Illinois appellate review process challenged the Trial Court's findings on the ground that the Trial Court Judgment was substantially a re-iteration of Petitioners' Amended Complaint—consisting largely of conclusions of ultimate fact, intermixed with Petitioners' theories of action, all shrouded in ecclesiastical characterizations. Further, the Illinois Appellate Court does, contrary to Petitioners' misrepresentation, find fault with the Trial Court's finding that there existed an "Anna Church Session" for Petitioners' Administrative Commission to replace (Petitioners' Appendix A-28), and with those portions of the Trial Court Judgment affecting property interests and acquiescing in UPCUSA's General Assembly's interpretation of its own constitution—describing these findings as "self-serving arguments rather than supportable allegations of fact * * * *". (Petitioners' Appendix A-31).

The following clarified, corrected, or additional facts are material to consideration of the questions presented.

This case arises from a dispute over ownership and control of church property. The principal adversary among Petitioners is The United Presbyterian Church in the United States of America [hereinafter "UPCUSA"]; among Respondents the principal adversary is The First Presbyterian Church of Anna, Illinois, an Illinois General not-for-profit Corporation [hereinafter "Anna Church Corporation"]. (Petitioners' Appendix A-2, A-23).

UPCUSA is the same general denomination which has heretofore been denied *Certiorari* in cases cited in the TABLE OF AUTHORITIES. UPCUSA,s organization is variously characterized as "hierarchical" or "connectional", depending upon whatever a writer believes the characterization will suggest as to the nature and extent of the power, if any, of one UPCUSA judicatory over another. However, the agreed basis for UPCUSA's relationship with local congregations is its Book of Order, generally [and hereinafter} referred to as its "Constitution". (Petitioners' Appendix A-6, A-23). The entire Constitution—not only those paragraphs cited in the Petition—was in the Trial Court Record and was before the Illinois Appellate Court.

A presbyterian congregation in Anna, Illinois, had a relationship with UPCUSA and its predecessors commencing in 1866.

In 1929, UPCUSA attempted to insert a trust provision into its Constitution, to require that local church corporations declare in their charter that their "property is held in trust under the Constitution of and for [UPCUSA]". But the proposal was rejected. It never became a part of the Constitution. (Petitioners' Appendix A-23).

In 1975, the congregation in Anna incorporated itself under state law—the Illinois General Not-for-Profit Corporation Act. The congregation did not, as the Petition claims, simply "form a separate and distinct corporation to handle property". (Petition p. 8, 25). Rather, the members of the congregation *were* the corporation, and by Article IX, Section I of its By-Laws, subject to the ultimate civil autonomy of state law. (Petition p. 11, 25).[1]

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[1] Petitioners' argument that Anna Church Corporation was solely "to handle property" is based on its misleadingly half-quoting (Petition p. 25) only the last phrase of Chapter XXXII, Paragraph 62.04, of its Constitution. That Paragraph, which was consistent with Anna Church Corporation's formation, belies UPCUSA's claim. Paragraph

Subsequently, in 1979 occurred the initial event contributing to issues precipitating this litigation: this Court decided *Jones v. Wolf.*

In response to this Court's decision, UPCUSA, in July 1980, again proposed to insert a trust provision into its Constitution. UPCUSA admitted that the amendment (1) would "make explicit" UPCUSA's "understanding" of property holding, (2) was responsive to the decision in *Jones v. Wolf,* and (3) addressed instances where a congregation withdrew from UPCUSA. (T. 506-507; Respondents' Appendix B).

On October 26, 1980, Anna Church Corporation, relying, *inter alia,* on UPCUSA's having admitted the absence of any Constitutional barrier, severed its relationship with UPCUSAby Amendment of its Articles of Incorporation and By-Laws. (Petitioners' Appendix A-11, A-23 and A-24).

Anna Church Corporation's corporate actions--including the manner of voting, and the efficacy of the 98-28 and 100-15 votes in favor of severance and conveyance—were all in full compliance with its corporate Articles and By-Laws and with the controlling provisions of the General Not-for-Profit Corporation Act. Petitioners have never asserted, and the Trial Court did not find, any defect whatsoever in the corporate proceedings under Illinois law. As a matter of compliance with civil

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62.04 states that "Each particular church shall be incorporated, cause a corporation to be formed and maintained* * *." (Respondents' Appendix A) At the same time is also belied Petitioners' elliptical allusion to Paragraph 62.04 to support their ruse of two separate entities in Anna (Petition p. 4). The purpose of the ruse is dual: to suggest the dispute is an "ecclesiastical issue", in order to enter the pale of *Watson,* and in order to have a semblance for their claim that their Administrative Commission had a "Session" to replace after October 26, 1980.

law, Anna Church Corporation's actions on October 26, 1980, and thereafter were unassailed and remain unassailable.[2]

On October 26, 1980, no paragraph, part or provision of UPCUSA's Constitution forbade or prohibited severance of relations with UPCUSA; by UPCUSA's own admission, withdrawal of a congregation was not even "addressed" in its Constitution at that time. (Respondents' Appendix B).

On October 26, 1980, no paragraph, part or provision of UPCUSA's Constitution contained any forfeiture or reversion of local church property in the event of severance.

On October 26, 1980, no paragraph, part or provision of UPCUSA's Constitution contained any trust in favor of UPCUSA, or any contractual or proprietary interest of UPCUSA in local church property.

On October 26, 1980, formal title to Anna Church Corporation's real and personal property stood indefeasibly in its name alone under state property law. On October 28, 1980, Anna

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[2] Further, although legally irrelevant, is the fact that UPCUSA's Constitution [¶35.01] is based on the principle of majority rule (Petition p. 6, footnote 4), which fully would have effectuated Anna Church Corporation's votes of 98-28 and 100-15.

The significance of the unassailed and unassailable actions of the Anna congregation's actions is dual. First, it relieves the necessity for the two-stage analysis alluded to by the *Jones* dissent [443 U.S., at 611]. Because, in *Jones,* the "only question" presented was which of the competing factions in the local congregation was, under state neutral principles, entitled to control of the congregation; here, Anna Church Corporation's full and unquestioned compliance with state corporation law resolved that issue. Secondly, by elimination of the second-stage issue, it leaves only a dispute between the equivalent of "central councils of a church organization and [the legal equivalent of] a unanimous local congregation"—a situation where the *Jones* dissent agreed that a neutral-principles analysis would suffice [443 U.S., at 614].

Church Corporation gave its property by conveyance to Respondent Anna Presbyterian Foundation, an Illinois General Not-for-Profit Corporation. (Petitioners' Appendix A-11, Paragraph 15, and A-30).

On October 26, 1980, UPCUSA's Constitution did, however, contain provisions disclaiming any civil effect or civil jurisdiction whatsoever. In particular, as a PRELIMINARY PRINCIPLE of its FORM OF GOVERNMENT, the Constitution, Paragraph 31.08, states that "ecclesiastical disciplines must be purely moral or spiritual in its object, and *not attended with any civil effects*"; of its CHURCH GOVERNMENT by judicatory (defined in Petition, p. 7, ¶¶ 3 and 4), the Constitution, Paragraph 35.03, ordains that "judicatories *ought not to possess any civil jurisdiction,* or to impose any civil penalties. Their *power* is *wholly moral or spiritual,* * * *." (See entire text of Paragraphs 31.08 and 35.03 in Respondents' Appendix C; Emphasis supplied hereinabove).

On November 20, 1980, UPCUSA's Constitution still contained the civil-effect disclaimers. But on that day, UPCUSA's Presbytery decided to create an "Administrative Commission" to replace a non-existent "Session" in Anna. And it is that "decision", and that Administrative Commission, for which UPCUSA now claims civil effect and civil jurisdiction.[3]

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[3] Petitioners suggest UPCUSA's Constitution [Chapter XXXII, ¶62.11] offers a "dissolution" means for asserting control, but that its Presbytery "has not yet adopted this remedy, in connection with the Anna church, but it could do so at any time". (Petition p. 27). This is another misrepresentation of fact. UPCUSA alleged "dissolution" in its Amended Complaint [C. 59, ¶13; C.63, ¶(6)]; UPCUSA's own witness, Stated Clerk William P. Thompson, admitted pursuit of "dissolution" was not appropriate. [T. 125-126]. Even the Trial Judge found that the congregation was not extinct (Petitioners' Appendix A-15, at ¶26), and the Appellate Court found that neither dissolution nor extinction had occurred. (Petitioners' Appendix A-31).

Presbytery's November 20, 1980, "decision" purports at most to remove "the Session of the First United Presbyterian Church of Anna". (Petition p. 15). In addition to lacking any basis in either ecclesiastical *or* civil law for any civil effect or jurisdiction, the "decision" is fraught with both conceptual and factual anomalies. First, after the October 26, 1980, severance, Anna Church Corporation's Board of Directors did not purport to be any UPCUSA judicatory called a "session". Consequently, after October 26, 1980, there was no "session" to remove, and there was no person claiming to hold any office as a member of any "session". Also, there was not then or ever thereafter any competing faction claiming to be Anna Church Corporation's Board of Directors. Further, the "decision" did not purport to remove any *person* from membership in any session. The "decision" did not claim retroactively to remove any person who was a member of any "session" on or prior to October 26, 1980. The "decision" did not claim to remove any member from Anna Church Corporation's Board of Directors. There was simply no dispute about who were members of Anna Church Corporation's Board of Directors.

Moreover, the actual dispute was over Anna Church Corporation's severance, its property, and its conveyance. Presbytery neither made, nor attempted to make, any "decision" about severance or property. Presbytery therefore failed to either address or resolve any dispute whatsoever between UPCUSA and Anna Church Corporation. The Illinois Appellate Court properly noted the limited scope of the Presbytery proceeding. (Petitioner's Appendix A-28, A-29, A-31 and A-32).

UPCUSA argues that the Presbytery decision empowered its Administrative Commission to take over the property, because a session had power to direct a congregation what to do with its property. But, even assuming *arguendo* that the Commission had the civil power to direct a non-existent session to direct a civil corporation, the facts are that the Commission did not attempt to direct any session to direct Anna Church Corporation to do, or not to do, anything with its property.

Instead, in March, 1981, UPCUSA commenced this action, asking the Illinois Trial Court to do what neither it nor Presbytery had done or attempted to do, i.e., to void severance and set aside the conveyance. Moreover, the Commission, which was created November 20, 1980, requested that the Court effectuate the Commission's non-exercise of its claimed power retroactively, i.e., to October 26, 1980.

Effective May 23, 1981, UPCUSA finally amended Chapter XXXII of its Constitution, adding:

> All property held by or for a particular church * * * is held in trust nevertheless for the use and benefit of The United Presbyterian Church in the United States of America.

In the Trial Court, UPCUSA urged, and was granted relief on, the theory of judicial deference to the Presbytery "decision", based upon broad interpretations of this Court's *Watson v. Jones* and the Illinois Supreme Court's *Lowe v. First Presbyterian Church.* (Petitioners' Appendix A-19, ¶¶3, 4 and 5).

The Illinois Appellate Court readily and easily distinguished *Watson* (Petitioners' Appendix A-25, 26) and *Lowe* (Petitioners' Appendix A-27), noted that the Presbytery "decision" was insufficient for judicial deference, anyway, (Petitioners' Appendix A-31), and adopted for Illinois the neutral principles approach (Petitioners' Appendix A-27, A-29). The Illinois Supreme Court denied leave to appeal. (Petitioners' Appendix A-34).

## REASONS FOR DENYING THE WRIT

### I.

**No Substantial Federal Question Is Involved, Because The Illinois Appellate Court Resolved The Property Dispute On The Basis Of Neutral Principles Of State Law That Did Not Involve Inquiry Into Religious Doctrine, Practice Or Precepts.**

The Appellate Court of Illinois explicitly utilized the neutral principles of law of the State of Illinois in resolving the property dispute. (Petitioners' Appendix A-27 and 29).

The Appellate Court also explicitly examined "the language of the deeds, the terms of the local corporate charter, the state statutes applicable to church property, and the relevant provisions of the church constitution and laws" searching for "an express or implied trust or other interest vested in the general church * * * * [provisions conferring] title or right or control to the local property * * * [or] some type of property interest in the general church". (Petitioners' Appendix A-30).

The Appellate Court was further explicit in its "most carefully, avoiding invasion into the ecclesiastical purview" and utilizing a "purely secular interpretation" of UPCUSA's Constitution. (Petitioners' Appendix A-30). The Appellate Court refused "impermissibly [to] intrude into church polity". (Petitioners' Appendix A-31).

The Appellate Court,—in its application of the neutral principles of the secular law of Illinois to the prescribed documents, and its concomitant avoidance of matter requiring inquiry into religious doctrine, practice and polity—, explicitly and strictly decided the case within the permissible proscribed pale of state law in the manner prescribed by the decisions of this Court for state court resolution of property disputes: *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601 (1969) [hereinafter "*Hull*"]; *Maryland and Virginia elder-*

*ship of the Churches of God v. Church of God at Sharpsburg,* 396 U.S. 367, 24 L.Ed.2d 582, 90 S.Ct. 494 (1969) [hereinafter "*Md. & Va. Churches*"]; *Jones v. Wolf,* 443 U.S. 595, 61 L.Ed.2d 775, 99 S.Ct. 3020 (1979) [hereinafter "*Jones*"]. The Appellate Court also was persuaded by *First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States of America,* 62 N.Y.2d 110, 464 N.E.2d 454 (1984) [hereinafter "*Schenectady*"], for which this Court has since denied *certiorari,* 83 L.Ed.2d 404, 105 S.Ct. 514 (1985).

The Appellate Court *followed* this Court's proscriptions as to permissible boundaries of its inquiry, and its prescriptions as to documents subject to inquiry, as set forth in the cited precedents. However, it did not *decide* any of the federal questions already decided in any of those precedents.

*Hull* is a case of severance from, followed by a property dispute with, Presbyterian Church in the United States ["PCUS"]—a denomination also self-characterized as "hierarchical" based on a substantially similar Constitution as, and now having merged with, UPCUSA. There, as here, local churches had severed, an Administrative Commission had been created, it acknowledged severance, and proceeded to take over the local church. The local church then sued to enjoin trespassing on its property. PCUS moved to dismiss on the basis of compulsory deference. [Id., 443; 444, footnote 3]. Georgia Courts had determined that PCUS had departed from doctrine, that implied trust had terminated, and enjoined PCUS from interfering. The case therefore raised new questions as to deference, inquiry into departure from doctrine, implied trust, and the like. This Court *decided* that civil court resolution of "controversies over religious doctrine and practice" was prohibited by the First Amendment, and that the First Amendment commanded civil court resolution of church property disputes without violation of the prohibition. [393 U.S., at 449]. This Court further *decided* that civil court resolutions be according to "neutral principles of law, developed for use in all property

disputes, * * *." [393 U.S., at 449]. The Appellate Court did not involve itself in re-deciding the federal constitutional questions decided in *Hull;* it merely followed *Hull's* command to apply state secular law as it would in any other property dispute.

*Md. & Va. Churches' Per Curiam* by this Court then *decided* that a Maryland State Court, in resolving a church property dispute in reliance upon "state statutory law * * * language in the deeds * * * charter of the corporations * * * the constitution of the [general denomination] pertinent to the ownership and control of church property", without inquiring into religious doctrine, did not involve a substantial federal question. [396 U.S., at 367-368]. The concurrence amplified the decision to include First Amendment proscription against precisely the intrusion UPCUSA desired of the Appellate Court in the case at bar:

> To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine. [396 U.S., at 369].

Again, the Appellate Court did not *decide Md. & Va. Churches'* prescriptions as to permissible documents or its proscription as to probing into allocation of power; the Appellate Court explicitly *followed* both the prescription and the proscription. And in the same manner of applying state law as did the Maryland Court, the Illinois Court avoided involvement in any federal question.

*Jones* is the most recent decision by this Court. It, like *Hull* and the case at bar, involves the same scenario of severance, the claim for civil control by a Presbytery Administrative Commission purporting to replace a non-existent Session, followed by the property litigation. Again, as in *Hull,* PCUS was the general denomination and UPCUSA its *Amicus Curiae.*

The federal question decided by this Court in *Jones* is a reaffirmation of *Hull* and *Md. & Va. Churches:* a state civil court may, consistent with the First and Fourteenth Amendments, decide a church property dispute on the basis of "neutral principles of law" [443 U.S., at 597, 604, 605-06], and that compulsory deference is not required in church property disputes [443 U.S., at 605]. Secondly, *Jones* again indicated that the "neutral principles" were those of state, not federal constitutional, law, emphasizing that the neutral principles of law to be utilized by the Georgia Court—to resolve that case's factual issue as to whether the majority faction of the congregation represented the religious corporation—was not a principle of federal law, but a principle of Georgia *state* law; for examples: "if in fact *Georgia has adopted* a presumptive rule of majority representation" [443 U.S., at 607]; "the *State may adopt* any method of overcoming the majoritarian presumption, so long as the use of that method does not impair free-exercise rights or entangle the civil courts in matters of religious controversy" [Id., at 608]; and, "Because these critical issues of *state law* remain undetermined, * * *". [Id., at 608, footnote 5; Emphasis Supplied].

*Jones* further *decided,* by describing more fully, the *instruments* to be examined, relied upon, and interpreted, viz., by copious references to the deeds, state statutes applicable to church property, local church charters, and "the provisions in the constitution of the general church *concerning the ownership and control* of church property". [Id., at 603; Emphasis Supplied].

Finally, *Jones* did *decide* more specifically the concepts to be included and excluded in application of "neutral principles". Included are the "well-established concepts of trust and property law familiar to lawyers and judges" [Id., at 603]; excluded are "*religious precepts* in determining whether the document indictated that the parties have intended to create a trust". [Id., at 604].

Once again, and upon the same scenario of events, the Illinois Appellate Court *followed* all decisions made in the *Jones* opinion. It did not *decide* any of the federal constitutional questions or guidelines promulgated in *Jones*. The Appellate Court accepted its constitutionally-proscribed sphere of application of secular state law, and proceeded to interpret the prescribed documents by secular state law. What this Court prescribed is what the Appellate Court examined, and found devoid of purely secular provisions creating ownership and control in UPCUSA. Clearly having functioned within its proscribed boundary, the Appellate Court decision did not involve any federal question, much less a substantial federal question.

## II.

**The Illinois Appellate Court Would Have Decided A Federal Question, And In A Way In Conflict With The Decisions Of This Court, Only Had It Followed Petitioners' Urging To Involve Itself In Interpreting The UPCUSA Constitution In Reliance On The Religious Doctrine, Practice And Precepts Of UPCUSA.**

The Appellate Court of Illinois consciously, explicitly, and demonstrably refrained from involving itself in the interpretation of UPCUSA's Constitution in other than a "purely secular" way. (Petitioners' Appendix A-30 and A-31).

Petitioners Reasons For Granting The Writ suggests the Appellate Court should have gone further. Petitioners intermingle the following arguments: [1] The Appellate Court ignored state precedent (Petition p. 19); [2] it failed to declare "the rights and legal relations" between the parties, presumably a violation of Illinois' declaratory judgment statute (Petition p. 19); [3] it should have applied *Watson v. Jones'* (80 U.S. 666) [hereinafter "*Watson*"] "broad doctrine of judicial deference" to the Presbytery "decision" (Petition p. 20-24); and [4] it "misapplied" neutral principles of law, by "ignoring" certain self-serving and self-selected pragraphs of UPCUSA's Constitution (Petition pp. 19-20, 24-30).

Arguments [1] and [2] are matters of state law subject to review, if at all, by the Illinois Supreme Court, and that Court denied leave to appeal. (Petitioners' Appendix A-34).

Argument [3], attempting to resurrect *Watson's* compulsory deference rule, runs afoul of three obstacles. First, *Watson* was between competing groups *both* claiming an association with UPCUSA, and therefore presenting a controversy characterized by the *Watson* Court as "essentially ecclesiastical" [80 U.S., at 670], and deference was urged [Id., at 669], and granted [Id., at 676], upon "questions ecclesiastical". *Watson* was not a case of severance—with one side, like Anna Church Corporation, eschewing UPCUSA affiliation—followed by a property dispute. There, property control only incidentally was involved, as it turned on who held the disputed offices. "[I]t was admitted that both 'the deed and the charter' contemplated the connection of the local church with the General Presbyterian one, and subjected both property and trustees alike to the operation of its fundamental laws" [13 Wall., at 683]. The Illinois Appellate Court properly held that on "the issue of property control, the *Watson* standard fails as a constitutional imperative". (Petitioners' Appendix A-26).

Secondly, this Court, in *Jones,* expressly rejected compulsory deference as a constitutional imperative [443 U.S., at 602, 605] for church property disputes.

Third, there was no decision to which a court could defer to resolve the dispute. Presbytery decided only that a "Session * * * be removed." (Petition p. 15) That was not any part of any dispute, but an *a posteriori* false issue [See *Presbytery of Riverside v. Community Church of Palm Springs,* 89 Cal.App. 3d 910; 152 Cal. Rptr. 854, at 862; *cert. denied,* 444 U.S. 974 (1979)] framed *after* Anna Church Corporation's severance, and after the property dispute erupted. As the Appellate Court found, the "Presbytery decision included no mention of severance * * * or of legal ownership of the church property". (Petitioners' Appendix A-28 to 29). This finding by the Ap-

pellate Court accords with the procedure for compulsory-deference application prescribed by its adherents in *Jones* [443 U.S., at 618-619, footnote 6], whereby application requires determination of "*whether* the dispute has been resolved within the structure of government and, if so, *what decision* has been made." [Emphasis supplied]. Here, no dispute was resolved by Presbytery. So, for the Appellate Court to have resolved the actual dispute, on the compulsory deference theory, where it had not been resolved "within [UPCUSA's] structure of government" [Id., at 619] would have involved the Court in an "invasion into the ecclesiastical purview", which it avoided. (Petitioners' Appendix A-30).

By its argument [4] UPCUSA advances certain selected, self-serving, paragraphs of its Constitution, and avoids mention of the civil-effect disclaimers. (Petition p. 26-27). UPCUSA does not contend that its selected paragraphs clearly or expressly confer ownership or control. Rather, it contends that they are "aspects" of control (Petition p. 26), or are "means" to assert and maintain control, and calls the Administrative Commission a "procedure" for control (Petition p. 26-27). Further, UPCUSA admits that the provision describing the Administrative Commission [Chapter XI, ¶ 41.15] must be "read in connection with" (Petition p. 28) the provision describing a Session [Chapter XI, ¶ 41.07] in order "to give effect" to enforcing "presbytery's authority over" (Petition p. 29)—not ownership and control of—the property.

These are the same, selected, paragraphs of its Constitution UPCUSA argued, unavailingly, to the South Dakota Supreme Court in *Foss v. Dykstra,* 342 N.W.2d 220, at 223-224 (1983); to the New York Court of Appeals in *Schenectady*, 62 N.Y.2d 110, 464 N.E.2d 454, at 461-462 (1984), *cert. denied,* 83 L.Ed.2d 404, 105 S.Ct. 514 (1985); and, to the Missouri Supreme Court in *Presbytery of Elijah Parish Lovejoy v. Jaeggi,* 682 S.W.2d 465, at 471-472 (1984), *cert. denied,* 105 S.Ct. 2361 (1985). The facts of those cases were, in *all* salient respects, precisely analogous to the facts before the Appellate Court of Illinois.

The Appellate Court of Illinois therefore reversed the Trial Court's reliance on these selected paragraphs, holding that those paragraphs did not "grant a *clear right* to denominational appropriation of local church assets". (Petitioners' Appendix A-28).

But, by its Petition UPCUSA again urges that a state Court become impermissibly entangled in "religious doctrine, practice, and administration" [443 U.S., at 605], to "impermissibly inquire into church polity". [*Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, at 723]. Because, each of the foregoing proscriptions would be violated were the Illinois Court required to resolve the ambiguities, religious meanings, and internal inconsistencies posed, for example, by an Administrative Commission acting with no explicit or implicit property ownership or control accoutrements under Chapter XI, Paragraph 41.15 (Petition p. 27), but "taking the place of the existing [if one there were] session", the claimed authority of which, under Chapter XI, Paragraph 41.07 (Petition p. 27), is subject to the prefacatory, and unquestionably religious precept of, "Directory for Worship".

Further, if a civil court were properly to treat UPCUSA's Constitution as it would any other civil contract, it would read and interpret it in its entirety. Then, the civil-effect disclaimer of the PRELIMINARY PRINCIPLES of UPCUSA's FORM OF GOVERNMENT, and the civil-jurisdiction disclaimer of UPCUSA's judicatories of CHURCH GOVERNMENT (Respondents' Appendix C), would have to be juxtaposed and reconciled with the Presbytery/Administrative Commission/Session paragraphs selectively marshaled by UPCUSA.

Resolution should be in purely secular terms, as the New York Court of Appeals did, finding that the power UPCUSA claims for its Sessions is belied by the civil-effect disclaimers, requiring that the claimed control by the Administrative Commission through Session "powers" be discounted. [*Schenectady,* 464 N.E.2d, at 462].

To avoid that result, UPCUSA now urges that the Illinois Court be required to resolve the ambiguities, as they were called in *Schenectady,* within UPCUSA's terms of interpretation, being the terms of its religious doctrine, practice and precepts.

UPCUSA's argument to a civil court would necessarily be that, within its ecclesiastical system of religious doctrine, practice and precepts, the paragraphs it selectively advances mean more than they say, and the civil-effect disclaimers mean less than they say. But that argument, and the interpretive difference between those conflicting Constitutional provisions, is then unquestionably resolvable *only* by a civil court's immersion into and acceptance of *purely* religious precepts.

UPCUSA offers *Jones* as compelling intrusion into its morass of conflicting constitutional provisions. But *Jones* compels, instead, "special care to scrutinize the document *in purely secular terms,* and *not to rely on religious precepts".* [443 U.S., at 604; Emphasis Supplied]. UPCUSA would have the Illinois Court so beyond "purely secular terms" and utilize "religious precepts" of interpretation and resolution of ambiguities and contradictions. UPCUSA's way would have been the First Amendment violation. The Appellate court scrupulously avoided such a First Amendment violation, thereby upholding this Court's barrier between Church and State.

## CONCLUSION

The Appellate Court of Illinois neither has decided a federal question, nor, *a fortiori,* has it decided a federal question in a way in conflict with any applicable decision of this Court.

Respondents therefore respectfully request that the Petition be denied for lack of jurisdiction, or, in the alternative, be denied.

Respectfully submitted,

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Anna, Illinois
Attorney for Respondents

# APPENDIX

## APPENDIX A

## THE FORM OF GOVERNMENT

### CHAPTER XXXII—OF INCORPORATION AND OF TRUSTEES

* * * *

62.04 Each particular church shall be incorporated, cause a corporation to be formed and maintained, or in states forbidding the incorporation of religious bodies elect from its members individual trustees: to receive, hold, encumber, manage and transfer property, and to facilitate the management of its civil affairs in such manner as may be directed by the session of the particular church from time to time and according to this Constitution.

## APPENDIX B

THE UNITED PRESBYTERIAN CHURCH
In the United States of America
1201 Interchurch Center
475 Riverside Drive
New York, N.Y. 10027
Telephone 212-870-2005

July 1980

Sisters and Brothers in Christ:

The Commissioners to the 192nd General Assembly of The United Presbyterian Church in the United States of America, meeting in Detroit, Michigan, May 27 - June 4, 1980, in an almost unanimous decision, after opening hearings in which all could participate and all points of view be expressed, voted to approve and send to the presbyteries the overture "On Property." During the coming year, our church will be engaged in a process of study and response to the chapter proposed for the Book of Order.

It will be the responsibility of each of our presbyteries to understand the intent and effect of this decision. It is, therefore, essential that you carefully study the full text of the General Assembly's action and note what it actually proposes.

This overture, if approved:

—Will make explicit what has been our denomination's understanding of how the holding of property relates to the nature and unity of our church;

—Will be an appropriate response to a decision in July 1979 by the U.S. Supreme Court (*Jones v. Wolf*) that, in effect, told us that the courts will take seriously our historic understanding of how property relates to the organic nature of the church only if we express that understanding explicitly in our Constitution.

—Will address those few instances when a majority of the members of a congregation votes to withdraw from The United Presbyterian Church in the United States of America.

This overture, if approved, will not result in any of the following:

—It will not lead to any usurping of the proper and clearly delegated rights of a session and congregation over its own life and the use of its material resources;

—It will not increase control by any judicatory of our church over the property (real or personal) of a congregation;

—It will not abridge the right of an individual or of several individuals in a congregation to withdraw from The United Presbyterian Church in the United States of America.

This new chapter on property is consistent with our Constitution and our long history as a church. In 1793, the "radical" or basic principles of our presbyterian polity were set down for the establishment of an American Presbyterian Church. The first of the principles is this: "That the several different congregations of believers, taken collectively, constitute one Church of Christ, called emphatically, the Church; that a larger part of the Church, or a representation of its, should govern a smaller, or determine matters of controversy which arise therein;..." (Form of Government, Chapter V, Section 1 (35.01).)

Following this principle, the judicatories of our church have consistently exercised proper authority, the higher or more inclusive over the lower and less inclusive, in matters of dispute. One of the values of this process is the avoidance of civil litigation. When matters of dispute arise in a congregation, for example, they are properly handled by the presbytery. We make no distinction between the spiritual nurture and oversight of

congregations by the presbytery and the use of physical resources that are the necessary equipment for ministry.

This General Assembly has acted out of its spiritual concern to be faithful to the unity of the church. The church is not a private possession but a sacred trust and its property cannot be separated from its life, ministry, and mission.

We submit this overture to you for thoughtful consideration in the spirit of the Apostle Paul, who wrote, "I therefore, a prisoner for the Lord, beg you to lead a life worthy of the calling to which you have been called, with all lowliness and meekness, with patience, forbearing one another in love, eager to maintain the unity of the Spirit in the bond of peace." (Ephesians 4:1-3.)

We ask you and your session to engage in study and prayer that presbyteries may act according to the will of God in this and in every matter. May God grant us the gift of understanding and love as we seek to be faithful.

The One Hundred Ninety-second General Assembly

/s/ Chas. A. Hammond
By: Charles A. Hammond
Moderator

## APPENDIX C

## THE FORM OF GOVERNMENT

### CHAPTER I—PRELIMINARY PRINCIPLES

* * * *

31.08 Lastly, that, if the preceding scriptual and rational principles be steadfastly adhered to, the vigor and strictness of its discipline will contribute to the glory and happiness of any church. Since ecclesiastical discipline must be purely moral or spiritual in its object, and not attended with any civil effects, it can derive no force whatever but from its own justice, the approbation of any impartial public, and the countenance and blessing of the great Head of the Church Universal.

### CHAPTER V—CHURCH GOVERNMENT

* * * *

35.03 These judicatories ought not to possess any civil jurisdiction, or to impose any civil penalties. Their power is wholly moral or spiritual, and that only ministerial and declarative. They possess the right of requiring obedience to the laws of Christ and of excluding the disobedient and disorderly from the privileges of the Church. To give efficiency, however, to this necessary and Scriptural authority, they possess the powers requisite for obtaining evidence and inflicting censure. They can call before them any offender against the order and government of the Church; they can require members of their own society to appear and give testimony in the cause; but the highest punishment to which their authority extends is to exclude the contumacious and impenitent from the congregation of believers.